Hartford Accident & Indemnity Co. V. City of Thomasville, Ga. Ex rel. Karner, 100 Fla. 748, 130 So. 7 (1930).

Subject Matter Jurisdiction cannot be enlarged sua sponte by the courts. Bohlinger v. Higginbothan, 70 So. 2d 911 (Fla. 1954). In addition, because "[I]t is conferred....by the constitution or a statute, [it] cannot be created by waiver, acquiescence or agreement of the parties." Chapoteau v. Chapoteau, 659 So. 2d 1381, 1384 (Fla. 3d DCA 1995). Courts always have the subject matter jurisdiction that has been conferred on them by law. Nonetheless, it must be properly invoked and perfected in order for a particular court to act on its subject matter jurisdiction. Florida Power & Light Co. v. Canal Authority of State of Florida, 423 So. 2d 421 (Fla. 5th DCA 1982). Invoking a court's subject matter jurisdiction is alleging a dispute that is within the purview of the court's subject matter jurisdiction. Perfecting jurisdiction is obtaining adequate service of process on all indispensable

parties. For courts to exercise jurisdiction, it is not enough to obtain service on the opposing party. The party who commenced the action at state in an otherwise justiciable controversy, to entitle the court to grant that party relief. Rogers & Ford Construction Corp. v. Carlinda Corp., 626 So. 2d 1350 (Fla. 1993). See W.R. Cooper, Inc. v. City of Miami Beach, 512 So. 324. 326 (Fla. 3d DCA 1987); Robinson v. Howe, 35 Fla. 73, 17 So. 368 (1895); Barkett v. Hotsy, 399 So. 2d 385 (Fla 3d DCA 1981).

The requirement that indispensable parties be joined before a controversy can be adjudicated derives from the fundamental principle that courts cannot act on parties rights without having jurisdiction over them. See Locke v. Sandler, 156 Fla. 136, 23 So. 2d 276 (1945); Flagship National Bank of Miami v. Testa, 429 So. 2d 69 (Fla. 3d DCA 1983). When the court has jurisdiction of the case and its jurisdiction has been obtained properly, it cannot arbitrarily refuse to exercise its powers. The state courts refused and failed to join

indispensable parties and to grant Petitioners a Final Judgment based on the original trial judge's adjudicated merits. Moreover, the Second District Court of Appeals ruled in this very same cause in it's December 18, 1998 Opinion that it could not affirm the award of relief that was not supported by the pleadings, the evidence and that was not sought and objected to by both parties. Also, the Second District Court Of Appeals (Judge Casauneva's) expressed concerns in the court's December 6, 2000 Order is in direct conflict with the court's affirmed Rescission decision.

This United State Supreme Court has jurisdiction because the state court of last resort has arbitrarily and capriciously imposed the judgment and remedy of Rescission without any semblance of fundamental procedural and substantive due process and equal protection of the laws pursuant to the Fourteenth Amendment to the U.S. Constitution, the Florida Constitution, Statutory Law and Case Law.

STATUTORY PROVISIONS INVOLVED

This case concerns the "How real estate is conveyed" Florida Statutes, Section 689.01, F.S. 117.05, F.S. 117.105, F.S.117.107, F.S. 831.01, F.S. 831.02, F.S. 812 etc.

STATEMENT OF THE CASE AND FACTS

This case is about the state courts refusing and failing to exercise it jurisdiction to grant a Final Judgment based on the adjudicated merits and refusing and failing to join indispensable parties to Petitioners detriment. Instead, the state courts exceeded it jurisdiction by violating and circumventing constitutional, statutory and common laws to extricate Respondents from their fraud while double punishing Petitioners (the innocent victims), including taking Petitioners private real property.

On January 27, 1998 the state trial court entered a Final Judgment On Petitioners Counterclaim but the final judgment relief that was provided was not supported by the pleadings, the evidence and was objected to by both parties.

Nonetheless, the trial judge's adjudicated issues, facts, conclusions of laws, claims and orders clearly determined the rights of the Petitioners. The trial judge's successor(s) fundamentally erred because they refused and failed to join Stewart Title Guaranty Company, Stewart Title of Polk County Inc., Allen Damron, Debra Damron, Elaine P. Canady, and Edith F. Rewis the third and indispensable parties to Petitioners detriment. Petitioners Mickens were the prevailing party on the merits on all counts of Petitioners counterclaim. On December 18, 1998, the Second District Court of Appeals reversed the final judgment because the relief provided in the final judgment was not supported by the pleading or the evidence and was not requested by either party. The Second District Court of Appeals did not reverse and remand for a new trial nor did it remand to take additional evidence. See Mendelson v. Mendelson, 341 So. 2d 811, 813-14 (Fla. 2d DCA 1997) (citations omitted); O.P. Corporation v. Village of North Palm Beach, 302 So. 2d 130

(Fla. 1974) (consent of reviewing court is required for presentation of new matter affecting cause after mandate issued); St. Lucie Harvesting & Caretaking Corp. v. Cervantes, 664 So. 2d (Fla. 4th DCA 1995). However, on remand the lower court fundamentally erred when it arbitrarily supplanted Petitioners' final judgment on Petitioners' counter-claim with a final judgment and remedy of rescission. On appeal and on cross appeal both parties agreed that the lower court had exceeded the scope of the Second District Court of Appeals' Opinion and mandate, and misrepresented the facts and the law pertaining to a Final Judgment and Remedy of Rescission. The lower court lacked subject matter jurisdiction of rescission because the lower court's jurisdiction for rescission had not been invoked, perfected, litigated, adjudicated or comported with due process and equal protection of the laws. Petitioners Mickens had sought and won damages for Breach of Construction Contract which both parties agreed was an adequate

judgment and remedy in law. The trial Judges' successor clearly violated the principles of The Law Of The Case, Res Judicata, Issue Preclusion and Stare Decisis.

On December 6, 2000, the Second District Court of Appeals affirmed the final judgment and remedy of rescission without explanation in violation of due process, equal protection of the laws, statutory and common laws including it own previous ruling in the same case.

On December 3, 2004, the Second District Court of Appeals affirmed the trial Judges' successor arbitrary and capricious imposed final judgment awarding damages totaling $234,854.64 to Respondent Damron, who was the losing party based on the adjudicated merits of the case. Also, Respondent Damron Construction is a technical or a nominal party who lacked legal or equitable standing, a right to sue, a valid cause of action, title or interests. The factual situation as set out in the State Courts decisions conflicts with Article V, Section I and Section 5 of the Florida Constitution,

Florida Case law and Florida Statute Chapter 26. The state courts did not apply the constitutional and statutory provisions in a manner consistent with U.S. Constitutional notions of due process.

Clearly, Case No SC05-257 and SC05-930 is the same identical case with multiple parties that was required to be joined but the state court refused and failed to join the lawsuits to prevent Petitioners from obtaining a final judgment for their fraud against all indispensable parties. The state courts discriminated against Petitioners when they refused and failed to join Respondent Damron Construction and Respondent Stewart Title Guaranty Company in the same lawsuit and refused and failed to consider their relationships and interests pertaining to Petitioners private real property. Petitioners Mickens notes the fraud against Petitioners was accomplished by the Damrons with the aid and assistance of Stewart Title Of Polk County Inc., a franchisee of Stewart Title Guaranty Co. Inc. The particular employee of Stewart

Title of Polk County was not only vice president at the entity but was also the authorized agent for title policy issuance for Stewart Title Guaranty Company.

After Trial Judge Tim J. Strickland rulings in Case No. GCG-97-0455, Chase Federal, which had taken a note and mortgage from Respondent Damrons, personally endorsed by Allen and Debra Damron, his wife, relying on the quitclaim deed and Title Insurance Policy (mortgage policy) issued by Respondent Stewart Title Guaranty Company called upon Stewart Title Guaranty Company to live up to its subrogation policy obligations and make Chase Federal/Nationsbanc whole for the funds it advanced to the Damrons. Stewart Title Guaranty Company conceded the improprieties and paid Chase Federal/Nationsbanc claim under the Subrogation Insurance Policy but took as "salvage" an assignment of the Damron's note and mortgage (without recourse). Respondent Stewart Title Guaranty Company therefore was not a Bonafide Purchaser for Value without

notice, indeed their payment to the bank was not a purchase but rather the fulfillment on their contractual subrogation insurance policy obligation. Respondent Stewart Title Guaranty Company therefore took the note and mortgage with the full knowledge of the infirmity of the mortgage. Respondent Stewart Title Guaranty Company took the assignment from the bank without additional value and was not a bonafide purchaser for value nor a holder in due course. Knowing, well that the note signed by the Damrons were worthless.

Despite having conceded to Chase/Nationsbanc the mortgage was worthless and void. Respondent Stewart Title Guaranty Company nevertheless instituted an action to foreclose what they knew to be a void mortgage filing against all the Damrons (later dropped the Damrons) and Petitioners private real property. One cannot succeed in equity when one asks the equity court to exercise its equity jurisdiction to foreclose a mortgage that is known to be invalid.

Petitioners Mickens defended the Stewart Title Guaranty's foreclosure and equitable lien action by asserting the invalidity of the mortgage. The trial court judge dismissed all of the Damrons who are the subrogors of Stewart Title Guaranty Company who made it possible for the Damrons to give Chase Federal a fraudulent note and mortgage. The state court unlawfully exceeded it's jurisdiction by knowingly authorizing Respondent Stewart Title Guaranty Company to maliciously prosecute Petitioners based on a purported foreclosure/equitable lien action. Before the state trial court purported foreclosure/equitable lien action took place, the lower court judge unlawfully conspired and authorized Respondent Damrons and Stewart Title Guaranty Company to convert and convey Petitioners Mickens' private real property title via a "fraudulent special warranty deed" from the Damrons to Stewart Title Guaranty Company in violation of Chapter 65 (Quiet Title Procedures).

Petitioners Mickens counter-claimed that Stewart Title Guaranty was directly and vicariously involved as a consequence of their authorized agents acts, liable to petitioners for damages sustained by reason of the attempt to foreclose the faulty mortgage that they had settled with Chase Federal/Natinsbanc for having facilitated the fraud by having issued a title guarantee policy. Respondent Stewart Title Guaranty Company authorized agent false witnessed and notarized the faulty quitclaim deed and closed the bank loan and issued the essential title policy.

It is Petitioners Mickens position that due to fraud perpetrated on petitioners by respondents, they had no viable claim against Petitioners Mickens, but indeed owes and will owe the Petitioners damages for fraud, conspiracy, slander of title, negligence, fees, costs etc. However, the state courts decided unlawfully to extricate Respondents Damrons and Stewart Title Guaranty Company from their fraud and to retaliate against Petitioners Mickens by punishing petitioners

for exercising free speech and seeking redress for Respondents torts and crimes.

ARGUMENT

POINT-1- STATE COURTS FINAL JUDGMENTS SUBJECT MATTER JURISDICTION WAS NOT INVOKED AND PERFECTED AGAINST PETITIONERS

This court has certiorari jurisdiction because the Second District Court Of Appeals' December 6, 2000 and December 3, 2004 affirmed decisions conflict with the U.S. Constitution, Florida Constitution, Florida Statutory Laws and Florida Case Laws which is the basis for this court's jurisdiction. Subject Matter Jurisdiction is essential. A state court judgment lacking jurisdiction of the subject matter is void. See Bohlinger v. Higginbothan, 70 So. 2d 911 (Fla.1954), subject matter jurisdiction cannot be enlarged sua sponte by the courts. When a court acts without jurisdiction it's action is void. See e.g.., Gay v.McCaughan, 105 So. 2d 771 (Fla. 1958); 6 Malone v. Meres, 91 Fla. 709, So. 677

(1926). A court's jurisdiction is generally invoked in a given case by a party filing a proper pleading which alleges material facts demonstrating (1) the existence of a judicial controversy (a right in dispute between two or more parties) within the subject matter jurisdiction of the court and (2) when a binding judicial determination requires the court to act directly on an object (res), that such court has, or can acquire jurisdiction over such res. See Justice Brown in early Florida Case of Lovett v. Lovett, 93 Fla. 112 So. 768 (1927).

The state court 's incorrect decision on subject matter jurisdiction is fundamental error and constitutes a departure from the essential requirements of the law and warrants invoking certiorari jurisdiction in the U.S. Supreme Court. The state courts final judgments are unsupported by the adjudicated findings of facts and laws that was determined by the original trial judge. Instead of awarding relief supported by the adjudicated merits, the state courts awards relief to the

respondents for their fraud and conspiracy to the petitioners (victims) detriment.

POINT-II-BOTH PARTIES AGREED ON APPEAL THAT STATE COURT FINAL JUDGMENT OF RESCISSION WAS ARBITRARY UNLAWFUL AND DID NOT COMPORT WITH DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

On the second appeal and cross appeal in this very same cause, Case No. 2D99-3153 both parties objected and agreed that the state trial judge's successor(s) arbitrarily and unlawfully imposed it's sua sponte arbitrary final judgment and remedy of rescission without subject matter jurisdiction and without any semblance of due process and equal protection of the laws. Both parties argued and agreed that adequate notice is fundamental element of right to due process, that litigants should be entitled to anticipate consequences that reasonably flow from allegations of complaint . See U.S.C.A. CONST. AMEND.. 14; Freeman v. Freeman, 447 So. 2d 963, 964, (Fla. DCA 1981) (granting relief neither requested, noticed nor litigated by an party

constitutes denial of due process; Hart v. Hart, 458 So. 2d 813 (Fla. 4th DCA 1984). A trial court cannot determine matters not noticed for hearing and not subject of appropriate hearing; Oakley v. Oakley, 439 So. 2d 1044 (Fla. 4th DCA 1983). The trial court lacks jurisdiction to hear and determine matters which are not the subject of appropriate pleadings and notice. See Defreitas v. Defreitas, 398 So. 2d 991, 992 (Fla. 4th DCA); Tutwiler Cadillac, Inc., v. Brockett, 551 So. 2d 1270 (1st DCA 1989); Ray v. State, 403 So. 2d 956, 960 (error was fundamental or jurisdictional). Sanford v. Rubin, 237 So. 2d 134, 137 (Fla. 1970) Fundamental error, the Supreme Court indicated that for error to be so fundamental that it may be urged on appeal, the error must amount to a denial of due process. Moreover, the Second District Court Of Appeals had already ruled in the prior appeal of this very same cause that it could not affirm the award of relief sought by neither party. See Allen Damron Construction Company v. Mickens, 725 So. 2d 1174, 1175

(Fla. 2nd DCA 1998). The Second District Court Of Appeals has clearly recognized that "[no] principle of appellate jurisdiction is more firmly established than the one which provides that a trial court utterly lacks the power to deviate from the terms of an appellate mandate" Mendelson v. Mendelson, 341 So. 2d 811, 813-14 (Fla. 2d DCA 1977) See O.P. Corporation v. Village of North Palm Beach, 302 So. 2d 130 (Fla. 1974) (consent of reviewing court is required for presentation of new matter affecting cause after mandate; St. Lucie Harvesting & Caretaking Corp. v. Cervantes, 664 So. 2d 7 (Fla. 4th DCA 1995). The Second District Court of Appeals fundamentally erred when it authorized the trial court to exceed the scope of it's December 18, 1998 Opinion and Mandate. Also, the Second District Court Of Appeals' concerns that was expressed in it's December 6, 2000 decision conflicted with it's affirmed decision.

The state court trial judge's successor who granted both erroneous judgments against Petitioners Mickens was a personal client of one of respondents attorneys. A fair trial in a fair tribunal is a basic requirement of due process. See Aetna Life Insur. Co. v. Lavoie, 475 U.S. 813, 831 (1986). A basic component of a fair tribunal is an impartial judge. See Weiss, 510 U.S. at 178. The successor Judge denied Petitioners that to a jury trial in Case No. GCG-98-2977.

POINT-III-THE STATE COURTS REFUSED TO JOIN INDISPENSABLE PARTIES TO THREE SEPARATE BUT IDENTICAL LAWSUITS TO PREJUDICE PETITIONERS

The state court refused and obstructed the joinder of Respondent Stewart Title Guaranty Company, Stewart Title Of Polk County Inc., Elaine P. Canady, Edith F. Rewis, Allen Damron and Debra Damron in Case No. SC05-257/2D03-0455/GCG-97-0455 under color of law. The state court refused, failed and obstructed the joinder of Allen Damron Construction Company, Allen Damron, Debra Damron,

Stewart Title Of Polk County Inc., Canady and Rewis to Case No. SC05-930/2D04-2699/GCG-98-2977 and Case No. GCG-98-1152. Petitioners filed Case No. GCG-98-1152 as the Plaintiffs but the state courts circumvented it with Case No. SC05-930/2D04-2699/GCG-98-2977. The state court refused and failed join and consider Stewart Title and the Damrons relationships and interest to Petitioners Mickens detriment.

Indispensable parties are persons "with such an in the subject matter of the action that a final adjudication cannot be made without affecting [their] interests." W.R. Cooper, Inc., v. City of Miami Beach, 512 So. 2d 324, 326 (Fla. 3rd DCA 1987). The requirement that indispensable parties be joined before a controversy can be adjudicated derives from the fundamental principle that courts cannot act on parties rights without having jurisdiction over them. Robinson v. Howe, 35 Fla. 73, 17 So. 368 (1895); Barkett v. Hotsy Corp., 399 So. 2d 385 (Fla. 3rd DCA 1981).

POINT-IV-STATE COURTS FAILED TO PUNISH RESPONDENTS FOR TORTIOUS MISCONDUCT AND UNCLEAN HANDS TO PETITIONERS DETRIMENT

Respondent Stewart Title Guaranty Company's fraud is what made Respondent Allen Damron Construction Company's fraud against Petitioners Mickens possible. To prejudice and discriminate against Petitioners Mickens, the state courts failed to punish respondents for their tortious misconduct and unclean hands and failed to exercise it's jurisdictional authority to require the joinder of indispensable parties. Instead the state courts, under color of law authorized Respondent Stewart Title to maliciously prosecute Petitioners Mickens in a separate frivolous foreclosure/equitable lien action (Case No. SC05-930/2D04-2699/GCG-98-2977). The frivolous foreclosure action was secretly authorized by the state courts which was premised or based on a fraudulent "special warranty deed' and a invalid mortgage that Respondent Stewart Title was liable for as a

result of it's fraudulent inducement against Chase Federal. The state courts misrepresentations and deprivation of due process and equal protection of the laws enable the state courts to maliciously misused the legal process under color of law to entered two arbitrary and erroneous final judgments against Petitioners to take or steal Petitioners' private real property. Also, the state courts authorized Respondent Damron to assign over to Respondent Stewart Title the arbitrary $234,854.64 judgment entered against petitioners. As it presently stands, Respondent Stewart Title Guaranty Company have two final judgments against petitioners because the state courts have refused and failed to punish Stewart Title and the Damrons for their, fraud, unclean hands, lack of equitable or legal standing, lack of a right and cause of action against petitioners and the fact that Stewart Title nor the Damron are bona fide purchasers for value, but merely thieves.

POINT-V- STATE COURT REFUSED AND FAILED TO APPLY UNCLEAN HANDS DOCTRINE

The state courts final judgment decisions conflicted with other district courts and the U.S. Supreme Court because the court decisions condone Respondent Stewart Title and Allen Damron Construction Company's violation of Section 689.01, Florida Statutes Sections 117.05, 117.105, 117.107, 831.01, 831.02 Florida Statutes and Florida Statutes Chapter 65 and 66 etc. The state courts have also condoned and authorized Respondent Allen Damron Construction Company and Stewart Title Guaranty Company's fraudulent conveyance, conversion and foreclosure of Petitioners Mickens private real property. Florida Statute, Section 689.01 unequivocally require two subscribing witnesses to be present when the grantor executes a deed. Florida Statute. Section 689.01 titled "How real estate conveyed" states in pertinent part that:

No estate ... or any uncertain interest of, in or out of any ... lands ... shall be created, made, granted,

transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, ... and no estate ... or any uncertain interest of, in, to or out of any ... lands, ... shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's agent thereunto lawfully authorized, or by the act and operation of law.

If a deed does not comply with the statutory requirements of Florida Statute 689.01 the such deed does not create any legal rights in the real property. See Girard v. Trembley, 384 So. 2d 39 (Fla. 3d DCA 1980); Walker v. City of Jacksonville, 360 So. 2d 52 (Fla. 1st DCA 1978); Santos v. Bogh, 334 So. 2d 833 (Fla. 3rd DCA 1976).

The state courts unlawfully authorized the respondents to fraudulent convey, convert and foreclose petitioners private real property title via a fraudulent "Special Warranty Deed". The state courts unlawfully authorized respondents to unlawfully purport a foreclosure lawsuit so

that petitioners private real property could be sold under color of law by the Polk County Clerk of the Court.

POINT-VI- STATE COURT REFUSED AND FAILED TO CONSIDER RESPONDENTS LACK OF EQUITABLE AND LEGAL STANDING OR BEING A BONA FIDE PURCHASER

This court has certiorari jurisdiction because the state court's final judgment of foreclosure/equitable lien conflicts with other states district courts and the U.S. Supreme Court decisions regarding equitable and legal standing. The party who commenced the action must have standing, defined as having a legally predictable right or interest at stake in an otherwise justiciable controversy to entitle the court to grant that party relief. The state courts should have refrain from exercising their jurisdiction because Respondent Stewart Title Guaranty Company and Allen Damron Construction Company lacked equitable and legal standing and possessed unclean hands. See Roger & Ford Construction Corp.v. Carlandia Corp. 626 So. 2d 1350 (Fla. 1993).

A Bona Fide Purchaser is "one who pays a valuable consideration, has no notice of outstanding rights of others and who acts in good faith" concerning the purchase, 303 S.W. 2d 110, 118; "one who acquires the apparent legal title to property in good faith for a valuable consideration and without notice of a claim or interest of a third person under the common source of title," 294 S.W. 2d 308, 311, innocent purchaser for value, 498 S.W. 2d 73, 76.

POINT-VII-STATE COURTS UNLAWFUL CIRCUMVENTION OF FLORIDA STATUTES 65 AND FLORIDA STATUTES 66 AND TREATED PETITIONERS DIFFERENT FROM SIMILARLY SITUATED LITIGANTS

The Tenth Judicial Circuit Court and the Second District Court of Appeals unlawfully exercised it jurisdictional authority when they ignored and circumvented preclusion laws and authorized a frivolous foreclosure/equitable lien action to be maliciously prosecuted against Petitioners Mickens private real property and to circumvent a Quiet Title and Ejectment actions pursuant to

Florida Statute 65 and 66. Petitioners Mickens are the absolute and unconditional owners of the below describe real property by warranty deed but the state courts fail to respect and protect Petitioners ownership.

Lot 42 Buckingham, according to the Plot there of, as recorded in Polk Book 85 Page 15 and 16 of the Public Records of Polk County, Florida.

POINT-VIII- REASONS WHY CASE IS IMPORTANT TO PETITIONERS, TO OTHERS AND TO THE SOCIETY

In essence the state courts has condone respondents theft of Petitioners Mickens' private real property and has subjected petitioners to: fraud, denial of due process and equal protection of the laws, denial of free speech and redress, frivolous lawsuits, malicious prosecution, abuse of process, stigmatization, retaliation, false pretenses, false perceptions, forgery, conversion of legal title, fraudulent conveyances, slander of title, extortion, conspiracies, fraudulent mortgage, wrongful possession of real property,

breach of construction contract, denial of VA benefits, substantial invasion of privacy, trespass, false notarization, false acknowledgment, notary's failure to validate signature, false witnesses, perjury, intimidation, harassment, degradation, malfeasance, misfeasance, nonfeasance, unlawful court judgments and orders, lawyers conflict of interest, lawyers and judges conflict of interests, false arrest and imprisonment. This case is important to the public because it condone legal plunder of Citizens private property ownerships rights to extricate Stewart Title Guaranty Company from fraud to the victims (Petitioners) detriment without any semblance of due process and equal protection of the laws. Petitioners Mickens are being punished severely two times by the state courts for obeying the laws and Stewart Title Guaranty Company is being awarded twice for violating the laws. Clearly, the Tenth Judicial Circuit and the Second District Court of Appeals has exceeded it subject matter and personal jurisdiction and have placed Stewart

Title Guaranty Company above the laws of the U.S. Constitution and the Florida Constitution. Stewart Title and Allen Damron Construction Company committed fraud against Petitioners and got caught but because Petitioners Mickens are African American the state courts failed to protect Petitioners private property rights.

. CONCLUSION

The Florida Tenth Judicial Circuit Court and The Second District Court of Appeals decisions clearly conflict with the United State Constitution, the Florida Constitution, Florida Statutory Laws, and Florida Case Laws. The U.S. Constitution and the Florida Constitution do not grant the courts to unlawfully take Petitioners Mickens private real property to extricate the wrongdoers from their crimes and torts to the victim detriment.

Respectfully submitted,

PRO SE
Ronnie Mickens and Gloria J. Mickens
6420 Odom Road
Lakeland, Florida
(863)853-5991

APPENDICES

APPENDIX A

IN THE DISTRICT COURT OF APPEALS OF FLORIDA
SECOND DISTRICT

No. 98-00882

ALLEN DAMRON CONSTRUCTION COMPANY

Plaintiff-Appellant

versus

RONNIE MICKENS and GLORIA J. MICKENS

Defendants/Counter-Plaintiffs/Appellee

December 18, 1998, Decided

Appeal from the Circuit Court for Polk County for the Tenth Judicial Circuit
Case No. GCG- 97-0455

Before PATTERSON, NORTHCUTT and SALCINES, District Judge.

OPINION
Allen Damron Construction Company

(Damron) appeals from an adverse final judgment entered

on Ronnie and Gloria Mickens' counterclaim. We reverse because the relief provided in the final judgment is not supported by the pleadings or the evidence and was not requested by either party.[1]

This controversy arises from a contract between Damron and Mickens for the construction of a single family residence on land the Mickens owned. To facilitate financing of the project, Damron obtained from the Mickens a quit-claim deed to their lot and used that deed to obtain a construction loan in Damron's name from Chase Federal Bank, FSB. Damron gave Chase a promissory note and first mortgage on the property, which Chase recorded.

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[1] Although the Mickens have not cross-appealed this issue, they did protest the trial court's disposition in their prostjudgment motion for reconsideration and clarification.

During the course of construction, irreconcilable differences arose between the parties and, when the house was completed, Damron sued the Mickens for specific performance and breach of contract. The Mickens responded with a multi-count counterclaim which sought various types of relief, including damages and cancellation of the quit-claim deed.

At the conclusion of a nonjury trial, the trial court held the quit-claim deed to be "void ab initio," finding that Damron had obtained it by fraud and that it was not executed in compliance with section 689.01, Florida Statutes (1995). The court then determined that "equity requires a remedy fashioned to justly compensate the Mickens for their damages but allow Damron Construction to extricate itself from a situation caused by its actions and obtain what financial benefit it might from the sale of the lot and residence." The court ordered Damron to purchase for the Mickens a

residential lot of their choice for the sum of not less than $60,000. [2] Upon the closing of the selected lot, the Mickens were ordered to transfer the original lot and house back to Damron. We can understand the difficulty presented to the trial court in presiding over this case. The Mickens changed lawyers several times and on occasions appeared pro se. The record is replete with unnecessary motions and hearings which consumed the trial court's time and would explain the trial court's frustration. We cannot, however, affirm a judgment unsupported by the record and objected to by both parties. We therefore reverse and remand for the entry of a

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[2] The original value of the Mickens' lot was $25,000. The court later clarified the $60,000 amount by saying it included the Mickens' attorney's fees. No hearing was held to determine attorney's fees.

new judgment which is supported by the record.[3] Although not raised by either party, we bring to the trial court's attention that, if it again bases its final judgment on the determination that the deed is void, Chase (or its successors in interest) is an indispensable party to the action.

REVERSED and REMANDED

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[3] The record is silent as the disposition of Damron's original lawsuit.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

[Filed December 6, 2000]

Case No. 2D99-3153

RONNIE MICKENS and GLORIA MICKENS,

Appellants,

vs.

ALLEN DAMRON CONSTRUCTION,

Appellee.

ORDER

PER CURIAM.

Affirmed.

THREADGILL, A.C.J. and BLUE, J. Concur.
CASANUEVA, J., Concurs specially.

CASANUEVA, Judge, Concurring.

I join the affirmance of the trial court's orders and write only to express several concerns.

First, this is the second occasion that this case and these parties have been before this court on nearly identical issues. Yet, despite indications in the record that the real property at issue in this appeal is being foreclosed in a separated action, the parties to the foreclosure action have not been joined in this lawsuit. In its first appellate review of this ongoing dispute, this court noted the indispensable nature of the real property's mortgagee. The failure to join the foreclosure action its parties limits the options available to the trial court to resolve the pertinent legal issues involving the real property.

Second, the trial court's announced purpose for a subsequent hearing is to establish the legal value of the improvements made to the real property by Allen Damron Construction. Once that value is quantified, should the

Mickenses elect to satisfy a judgment for that amount, their payment, under the present state of the pleadings and parties, will not satisfy a mortgage encumbering the real property. Rather, the monies would be paid directly to the construction company, which, as yet, does not possess a concomitant duty to satisfy the underlying mortgage. In order to preserve their ownership in the real property, the Mickenses may be required to pay twice-once to satisfy the judgment and again to satisfy the mortgage.

Third, the present judgment uses language that compels the Mickenses "to pay" for certain construction costs. Before entering a further order judgment that compel payment, the trial court must insure it possesses that legal authority as compared to entering a money judgment for amounts it determines are due.

It is not likely that the considerable efforts of the trial court to resolve this matter will yield a resolution without a

third appeal. Nevertheless, the efforts of the trial court and its predecessor have been significant.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

[Filed December 3, 2004]

Case No. 2D03-4550

RONNIE MICKENS and GLORIA MICKENS,

Appellants,

vs.

ALLEN DAMRON CONSTRUCTION,

Appellee.

ORDER

PER CURIAM.

Ronnie Mickens and Gloria J. Mickens, husband and wife, appeal from a final judgment awarding damages totaling $234,854.64 to Allen Damron Construction Co. The

damages were imposed as a sanction because Mr. and Mrs. Mickens refused to permit a court-ordered inspection of a residence. We affirm.

Expressly retained jurisdiction to impose sanctions should the Mickenses again deny Damron entry onto the property. Following the hearing, Mr. Mickens was heard to threaten anyone coming on the property with bodily harm. In view of this threat, Damron's expert expressed his fear and refused to inspect the premises. Damron claimed that Mr. Mickens's threat effectively precluded its ability to establish the amount of this claim. The court granted the motion and determined that the sanction of a final judgment awarding damages (based upon an earlier appraisal of the house performed by the Mickenses' expert) was appropriate.

After thoroughly reviewing the record, we cannot hold that the trial court erred. We affirm.

WHATLEY, NORTHCUTT, and CASANUEVA, JJ., Concur.

APPENDIX D

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

[Filed March 9, 2005]

Case No. 2D04-2699

RONNIE MICKENS and GLORIA MICKENS,

Appellants,

vs.

STEWART TITLE GUARANTY COMPANY; ELAINE B. CANADY; EDITH F. REWIS; ALLEN DAMRON CONSTRUCTION CO., a Florida corporation; ALLEN DAMRON; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; and DANIEL MARTINEZ,

Appellees.

ORDER

PER CURIAM.

Affirmed.

SALCINES, DAVIS, and VILLANTI, JJ., Concur.

APPENDIX E

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

ALLEN DAMRON CONSTRUCTION CO.,
Plaintiff / Counter Defendant

Case No. GCG 97- 0455
Section 7

v.

RONNIE MICKENS and GLORIA J. MICKENS
Defendants / Counter Plaintiffs,

FINAL JUDGMENT ON COUNTER-PLAINTIFFS' COUNTER-CLAIM

This Cause came before this Court for a non-jury trial. Having heard extensive argument and testimony from the parties, having received evidence from the parties, and having considering the attendant credibility issues, the Court has found the following.

FACTS:

On May 4, 1996, defendants / counter-plaintiffs, Ronnie Mickens and Gloria J. Mickens ("the Mickens"), entered into a residential construction contract with plaintiff / counter-defendants, Allen Damron Construction Company ("Damron Construction"), which provided that the Mickens' property would to be "temporarily subrogated" to Damron Construction and released back to the Mickens at the final closing.

On August 12, 1996, Allen Damron, owner and President of Damron Construction, obtained the Mickens' signature on a blank quit-claim deed to the property.

Without informing the Mickens and knowing that the Mickens already had available a conventional construction VA insured loan for the construction of the home, Damron Construction recorded this deed in the official record books of Polk County, Florida and entered into a montage with Chase Financial FSB using the Mickens' property as collateral for a construction loan.

As a result of the above referenced construction contract and quit-claim deed, a residential structure and pool exists on the Mickens' property.

Damron Construction now claims ownership of the property and sought to eject the Mickens from their property. In response, the Mickens have brought this action to cancel the August 12, 1996 deed, quiet title in the said property in themselves, find Damron Construction in breach of the construction contract, and eject Damron Construction who have occupied their property by placing a residential structure on the Mickens' property.

Based on these facts and the evidence presented at trial, the Court has made the following findings on the issues raised by the parties.

A. <u>THE AUGUST 12, 1996 DEED:</u>

Damron Construction through the person of Allen Damron, intentionally misrepresented the nature of the deed signed by the Mickens. By purposely creating the false impression that the deed would temporarily subrogate the

Mickens' property, Damron Construction intended to and in fact did gain the Mickens' reliance on these misrepresentations and obtained their signature on a blank quit-claim deed. As evidenced by their subsequent actions, the Mickens never intended to relinquish absolute and unconditional control over their property to Allen Damron Construction Company or any other claimant.

Because of their reliance on Damron Construction's misrepresentation, the Mickens have suffered damages including, but not limited to, the imposition of a mortgage on their property without their knowledge or consent.

Damron Construction, through the person of Allen Damron, failed to execute the above referenced deed in the presence of two witnesses as required by Section 689.01, Florida Statutes.

Damron Construction's actions and misrepresentations constitute fraud in the execution of the August 12, 1996, quit-claim deed.

Based on the above findings, it is hereby **ORDERED** and **ADJUDGED** that the August 12, 1996, quit-claim deed is **VOID AB INITIO.**

B. THE CONSTRUCTION CONTRACT:

The construction contract contained a list of specification and allowances for specific features as part of the contract. Damron Construction breached the construction contract by:

1. Failing to perform work of good quality free from faults and defects;1

2. Failing to submit change orders in writing as required by the contract;

3. Failing to have change orders approved by the Mickens as required by the contract;

4. Failing to close the loan commitment with the Mickens' bank, Nations Bank, and thereby depriving the Mickens of a VA protected construction loan; and

5. Failing to pay all sub-contractors as required by the contract.

It is therefore **ORDERED** and **ADJUDGED** that the Mickens' claims for damages, including fees and costs, is **GRANTED.**

C. THE REMEDY

The Court has determined that equity requires a remedy fashioned to justly compensate the Mickens for their damages but allow Damron Construction to extricate itself from a situation caused by its actions and obtain what financial benefit it might from the sale of the lot and residence.

Therefore, Damron Construction and any other interested parties shall have 90 days in which to purchase a residential lot selected by the Mickens for the sum of no less than $60,000.00 free and clear of any legal encumbrances. In conjunction with closing on the selected property, the Mickens shall deed the lot and residence which are the

subject of this action to Damron Construction or the stipulated claimant.

At the same time, the Mickens shall execute all necessary releases or satisfactions to Damron Construction or the other stipulated claimant so as to transfer full legal ownership of the lot and residence which is the subject matter of this litigation, and the Mickens shall accept the $60,000.00 residential lot as full satisfaction of their claim for damages and attorneys fees and costs.

Thereafter, the parties shall hold each other harmless from all claims, costs, and fees flowing from the aborted residential construction contract between the parties.

Upon completion of the above directed transactions, the Mickens should own, free and clear, a $60,000.00 residential lot of their choosing and will be responsible for their attorneys fees and costs.

Damron Construction or another stipulated claimant will receive full ownership of the lot and residence which is

the subject matter of this action from which to realize its fees and costs.

The Court will retain jurisdiction to consider the Mickens' quiet title and ejectment actions against Damron Construction and will consider those claims if these transactions do not occur.

DONE AND ORDERED in chambers this 27th day of January, 1998, at Bartow, Florida.

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1 The poor quality of the roof is a glaring example of the many faults and defects on the work performed by or at the direction of Damron Construction.

J. Tim Strickland
Circuit Court Judge

cc:

Joseph G. Bywater, Esquire
Post Office Drawer 2807
Lakeland, Florida 33806-2807

Brian E. Gray, Esquire
Post Office Box q3462
Tampa, Florida 33681

APPENDIX F

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUITS IN AND FOR POLK COUNTY, FLORIDA

Case No. GCG 97-455

ALLEN DAMRON CONSTRUCTION CO.,
Plaintiff / Counter-Defendant

v.

RONNIE MICKENS AND GLORIA J. MICKENS
Defendants / Counter-Plaintiffs

ORDER ON MOTIONS FOR FINAL JUDGMENT

This Cause came before the Court on cross motions for final judgment following remand from the Second District Court of Appeal. Having heard argument, reviewed evidence in the record, and being otherwise advised on the merits, the Court finds the following:

Defendant, Ronnie and Gloria Mickens, bought a lot for $24, 995.00 on which to build a house. A local contractor drew up plans, specifications and allowances for their house.

Defendants intended to have this contractor build their house, but before any such agreement, Mr. Mickens met Allen Damron. Mr. Damron told Mr. Mickens that Allen Damron Construction Company could build the same house at a lower price and even offered some extra features, such as plant shelves and arches, for no additional cost. (T. 356)

After Mr. Mickens' initial conversation with Mr. Damron, Defendants began negotiations with Allen and Debra Damron (the Damrons) of Damron Construction (Damron). Negotiations took place at one of Damron's model homes. Defendants told the Damrons that the previous builder had been willing to build the house for $172,400.00. (T.363) This price did not include the lot but apparently did include the pool. Damron offered to build the house for less, but the Mickens offered to pay the same price if Damron included exterior columns in the price. (T.364) During negotiations, the parties agreed to include the value of the lot in the financing for the house. Consequently, the final

contract price reflected the cost of construction plus the value of the lot.

On May 4, 1996, the parties executed a construction contract that incorporated a list of specifications, features and allowances. Pursuant to the contract, Damron would provide the financing for the construction of the house. The total contract price was $197, 400.00, and the lot would be temporarily subrogated to Damron during construction and released back to Defendants at closing. After the contract was signed, it became apparent, that the parties disagreed on which list of specifications were incorporated into the contract. Defendants original specifications included raised Formica cabinets and crown molding throughout the house. Damron claims that these specifications were changed to decrease the price of the house. (T.61) As a result, the specifications that Damron followed only required raised cabinets in the Kitchen and simply provided a $1,000.00 allowance for crown molding. It is also apparent, that the

parties disagreed as to what was included in the contract price. Defendants argue that the plaint shelves, french doors, the driveway, and brass fixtures in the sinks, tubs, and showers were included in the contract price. The parties also disagreed on the origin and application of the allowances that were attached to the contract. Defendants wanted to use the allowances provided for in their original plans. However, the allowances used by Damron did not match those original plans.

Defendants arranged for a VA insured loan with Nationsbank. The VA loan was not intended to finance the construction of the house. (T.234) Once construction was completed, Defendant's VA insured loan would pay off the financing obtained by Damron. Since the contract required Damron to finance the construction, Damron took out a construction loan from Chase Federal Bank. Damron needed a deed from Defendants showing a conveyance of some interest in the property. (T.229) One evening in August

1996, Mr. Damron brought an incomplete quit claim deed to the Defendants' apartment. (T.461) The Defendants were hesitant to sign a deed. To convince the Defendants to sign the deed, Mr. Damron assured them that the deed was necessary and that Damron had no intention of taking their land. However, Mr. Damron did not explain the interest that would be conveyed by the deed. Though Defendants signed the deed, Mr. Mickens testified that he thought he was simply giving Damron permission to build on his land. Defendants had no intention to convey ownership and title to Damron. (T.437)

On August 13, 1996, Mr. Damron had the quit claim deed fraudulently notarized. (T.250) As notarized, the quit claim deed reads:

The Seller, for and in consideration of the sum of $10.00 Dollars, and other valuable considerations . . . has remised, released and quitclaimed to the

Buyer, Buyer's heirs and assigns forever, all rights, title, interest and claim of the Seller in and to the following described land in Polk County, Florida.

Damrons claims and continues to claim fee simple title to Defendants' land. This clearly contradicts the Defendants' intentions and Mr. Damron's representations. Defendants did not expect Damron to have the deed fraudulently notarized and recorded. Subsequently, Damron used the property as collateral to obtain its construction loan.

Once construction began, it was clear that the parties had distinctly different ideas as to what they had agreed on and how the contract was to be performed. The first dispute arose over the allowance for lot clearing. Defendants' original plans had allowed $600.00 for lot clearing. Plaintiff claimed he could clear the lot for $250.00, and the allowance was subsequently changed to $250.00. (T.379) When Damron was unable to clear the lot for $250.00, Damron sought the difference from Defendants. Damron did not

allow Defendants to pick out the tile, carpet or crown molding of their choice. Damron claims that Defendants did not understand what the allowances for theses items meant. However, Defendant have testified that they were willing to pay the overages in order to get the materials they wanted. It appears that Damron simply interpreted the allowances as absolute limitations on Defendants' choices.

The parties also disagreed on the driveway. Damron claims that Defendants only had a $1,800.00 allowance for the driveway. Defendants claim that the $1,800.00 allowance was actually for possible additions to the driveway and that a standard driveway was included in the contract price. (T. 377) Damron also billed Defendants for plant shelves and french doors. Mr. Damron had previously offered to include the plant shelves as an incentive for Defendants to sign the contract. (T.367) Furthermore, the french doors were part of the original contract. Defendants also claim that the window trim should have been put in the house. Mrs Damron

testified that the window trim was mistakenly left on the specifications sheet, but Mr. Damron testified that Defendants were entitled to the window trim. (T.64 and 294-295). At the final inspection, the Defendants discovered that Damron had simply used the kitchen and bathroom fixtures in their model instead of the fixtures Defendants requested. Damron argues that Defendants were told that they would receive the fixtures that were in the model to save on construction costs. However, Defendants argue that they wanted the fixtures of their choice including brass fixtures in the sinks, tubs, and showers. (T. 403-405) Finally, significant defects have been found in the roof that Damron installed on the house.1 (T. 329-337)

As a result of these disagreements, Defendants

---

1 The disagreements and problems with the house addressed so far do not represent an exhaustive list of the problems Defendants have identified.

Refused to close on the house and this litigation ensued. In February 1997, Damron filed a three count complaint against Defendants. Count I sought $180,366.84 in contract damages. Count II sought damages allegedly resulting from Defendants' delay in closing. Count III sought an order quieting title to the property in Damron and declaring that Damron held fee simple title to the property. Defendants responded with counterclaims for fraud, cancellation of deed, quiet title, ejectment and breach of contract. Defendants essentially argued that Damron had committed fraud in regards to the quit claim deed, made changes after the contract was signed, and failed to build the home they wanted on their lot. Defendants argue that the deed is void, that they should have fee simple title to the property, and that Damron has occupied their land placing a house on the land that was not built according to the contract that they agreed on. Though Defendants claim that the house is not the house they asked for, they have shown their desire to keep the house

by occupying the house.

In January 1998, a bench trial was held. A final judgment was entered January 26,1998. Cross appeals were filed, and the Second District Court of Appeals reversed the final judgment.

This Cause is now before the Court on remand from the Second District Court of Appeals and cross motions for final judgment. Having heard argument from the parties and reviewed the evidence in the record, the Court finds that final judgment should be entered against Plaintiff on all three counts of its complaint. The Court further finds that Defendants essentially seek rescission pf the construction contract and an order quieting title to the property and house in Defendants.

Numerous cases set forth what a Defendant must show to obtain rescission of a contract. See Billian v. Mobil Corp, 710 So. 2d 984, 991 (Fla. 4th DCA 1998); Steak House, Inc., v. Barnett, 65 So. 2d 736 (Fla. 1953). Though

Defendants' could have been much clearer as to their desire for rescission and their attempts to rescind the contract, Defendants are before the Court pro se, and the Court finds that Defendants have made sufficient allegations in their counter claims and arguments before the Court to state a cause of action for rescission. Rescission is a harsh remedy and courts are generally reluctant to grant such a remedy. However, after reviewing the evidence, the Court finds that rescission is appropriate in this case on a number of grounds. First, Damron misrepresented its ability to build the house sought by Defendants for the price offered, misrepresented the features and amenities that it intended to put in the house, and misrepresented the choices that defendants would have as to materials. Billian v. Mobil Corp., 710 So.2d 984, 989-990 (Fla. 4th DCA 1998)(holding that material misrepresentation is ground for rescission.). Next, the parties entered the contract under incorrect assumptions as to how the house would be built, what features were included in the contract

price, and the degree of control Defendants would have in the process. Braman Dodge, Inc. V. Smith, 515 So. 2d 1053, 1054 (Fla. 3rd DCA 1987). Finally, Damron fraudulently maintained a claim to fee simple title to Defendants' property and used that claim to gain an unfair advantage as to what materials and features would be included in the house, Fishman v. Thompson, 181 So. 2d 604 (Fla. 3rd DCA 1965).

Damron misrepresented its ability to build the house Defendants wanted for less than they had already been offered and enticed Defendants by offering free added features. Damron then attempted to bill Defendants for these added features and misinterpreted allowances to prevent Defendants from choosing more costly materials for their house. Damron ignored Defendants' preferences in bathroom and kitchen fixtures and used the fixtures in its model in an apparent attempt to cut cost. Damron installed a faulty roof on Defendants' house. Finally, Damron fraudulently obtained a quit claim deed from Defendants and attempted to

use its improper claim to fee simple title as leverage to force Defendants to accept features in their house that they did not want. Under these circumstances, the Court finds that the May 4, 1996 contraction contract should be rescinded.

When a contract is rescinded, it is of no effect. Borck v. Holewinski, 459 So. 2d 405 (Fla. 4th DCA 1984). Since the contract has no effect, the Court must seek to return the parties to the position they occupied prior to the contract. In this case, the Court obviously cannot have the house removed from Defendants' property. However, the Court can return the parties to the same financial position they occupied prior to the contract. Turner v. Fitzsimmons, IV, 673 So. 2d 532, 535 (Fla. 1st DCA 1996) (noting that where restoration of the status quo is impossible a court may still grant rescission if the equities between the parties can be balanced.). Even though the Mickens did not receive the house they wanted, their land has been improved through the construction of a home on it. Defendants must therefore pay

for the reasonable costs of the materials and labor provided by Damron.

Since the reasonable cost of materials and labor involved in the construction of Defendants' house are unlikely to be the same as its appraised value, the Court must hear evidence as to such value. To this end, the parties are hereby directed to each choose one independent contractor to evaluate the reasonable value of the materials and labor involved and present these evaluations to the Court in an evidentiary hearing to be scheduled within 90 days of this order. Each party shall have 30 days in which to choose an independent contractor. At the above mentioned evidentiary hearing, the Court will consider evaluations by the independent contractors and any material defects in the house.

It is therefore, ORDERED and ADJUDGED that final judgment is hereby entered against Plaintiff on its complaint.

It is further ORDERED and ADJUDGED that the May 4, 1996 construction contract is hereby RESCINDED and of no effect.

Defendants are hereby ordered to pay Damron for the reasonable costs of the materials and labor it supplied in the construction of the house.

In return, Damron must execute a deed conveying any interest it claims in the property to Defendants.

ORDERED in chambers this 12 day of July, 1999 at Bartow, Florida.

Cecelia M. Moore
Circuit Court Judge

Copies to:

Mark M. Schabacker, Equire
P.O. Box3328
Tampa, Florida 33601-3328

Ronnie and Gloria Mickens
1837 Lady Bowers Trail
Lakeland, Fl 33809

Benjamin Hardin, Jr., Esquire
3001 U.S. Highway 98, South
Lakeland, Florida 33809

W. Patrick Ayers, Esquire
P.O. Box 3239
Tampa, Florida 33601-3239

APPENDIX G

IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

Case No.1998CA-002977
(Consolidated with
Case No. 1997CA-000455 and
Case No. 1998CA-001152
Section: 11

STEWART TITLE GUARANTY COMPANY,
Plaintiff, Counter-Defendants

vs

RONNIE MICKENS and
GLORIA J. MICKENS
Defendants, Counter-Plaintiffs

TRIAL ORDER

THIS MATTER came for trial before the court on 26-28 April 2004. Present were Stewart Title Guaranty Company, represented by Robert M. Quinn, Esquire, along with Ronnie and Gloria Mickens, Pro Se. Defendants, Allen Damron Construction Company, Allen Damron, and Debra Damron have been dismissed from the case, having settled

with the Plaintiff, by assigning their interest in 1997CA-000455 to Plaintiff, Stewart Title and Guaranty Company. State Farm Mutual Automobile Company and Daniel Martinez did not appear at trial.

INTRODUCTION AND HISTORY

This is an action to foreclose a mortgage on improved residential real property located at 1837 Lady Bowers Trail, Lakeland, Polk County, Florida legally described as follows ("Property"):

Lot 42, Buckingham according to the plat thereof, as recorded in Plat Book 85, Page 15 and 16 of the Public Records of Polk County, Florida and to collect on a promissory note in the original principal amount of $156,000.00 dated August 13, 1996 (the "Note"), together with interest, cost and attorneys fees due under the Note. The mortgage as dated August 13, 1996 (the "Mortgage") and secures payment of the Property to the extent of the loan

proceeds advanced to pay the cost of building the home and pool on the Property.

Plaintiff, Stewart Title Guaranty ("Guaranty"), is a Texas corporation authorized to do business in Florida. Guaranty is in the business of underwriting title insurance policies throughout the United States and, in this case, is the successor in interest to and assignee of NationsBank, National Association (South), Atlanta, Georgia, f/k/a Chase Federal Bank, FSB (the "Bank"), which made the construction loan evidenced by the Note and Mortgage, which are the subject of the foreclosure action. Guaranty is the owner and holder of that Note and Mortgage under a written Assignment from the Bank.

The Defendants are Ronnie Mickens and Gloria Mickens ("Mickens"). The Trial Order erroneously states that:

The Defendants are Allen Damron Construction ("Damron Construction"), Allen Damron and Debra Damron (together "the Damrons"), Ronnie Mickens and Gloria J.

Mickens ("Mickens"), State Farm Mutual Automobile Insurance Company ("State Farm") and Daniel Martinez ("Martinez").

Damron Construction is the maker of the Note and Mortgage and was the record titleholder of the Property when the Note and Mortgage were executed on August 13,1996. The Damrons are co-obligors with Damron Construction under the Note.

Ronnie Mickens and his wife, Gloria J. Mickens, ("Mickens") are the parties in possession and claim to be the true owners of the Property sought to be foreclosed. Mickens recorded claims of lien against the Property and an Affidavit of Equitable Owners as to the Property, and contend that the deed that conveyed the Property to Damron Construction was obtained from them by fraud. Guaranty contends the interests of the Mickens are junior and inferior to the interest of Guaranty under the Mortgage.

Martinez is the holder of a final judgment against a **(different) Gloria Mickens,** as recorded in the public records of Polk County, Florida on February 17, 1997, and State Farm is the subrogee pf Daniel Martinez claiming an interest in such judgment, That judgment may constitute a lien against the Property that Guaranty contends is junior and inferior to the lien of its Mortgage. **(Stewart Title is claiming that it has a superior interest in the Mickens property based on a fraudulent void ab initio quitclaim deed and a fraudulently invalid mortgage that it is liable for because of it's fraud and subrogation and guaranty relationships with the Damrons).**

Mickens have also sought to assert **(cross claims against the Damrons)** third party claims against Stewart Title of Polk County, Inc. ("Stewart Title-Polk"), Elaine P. Canady ("Canady") and Edith Rewis ("Rewis"). Those Third party claims have been dismissed in the this case, but form the basis of the complaint in Case No. 1998CA-001152.

(Mickens are presently being denied to litigate in state and federal court Case No. 1998CA-001152. The state and federal district court has not permitted Mickens to join multiple indispensable parties to be join in one lawsuit which involves the same set of operative facts and laws).

Stewart Title-Polk is a Florida corporation doing business in Lakeland, Florida and is a title insurance agency within the meaning of Fla. Stat. Section 626.841 (2), authorized to issue title insurance policies for Guaranty. Canady and Rewis are or ere employees of Stewart Title-Polk during the relevant time period and Canady is a licensed title insurance agent as defined by Fla. Stat. Section 626.841(1). Canady was the closing agent for Stewart Title-Polk on the construction loan to Damron Construction evidenced by the Note and Mortgage that Guaranty seeks to enforce and foreclose, and she issued a mortgagee's title insurance policy to the Bank, as lender. Canady is also a notary and she is identified as the notary and, together with Rewis, as witness

on the Quitclaim Deed to the Property (purportedly) from the Mickens to Damron Construction prior to the closing of the construction loan, the same deed that is the subject of Case No. 1997CA-000455 described below.

Allen Damron Construction Company v. Ronnie Mickens and Gloria J. Mickens, Case No. 1997CA-000455: In 1997, Damron Construction filed an action against Mickens seeking specific performance of a **construction contract and ejectment of the Mickens from the very Property, which is the subject of Guaranty's foreclosure action in this case.** That case was tried and the Court entered a final judgment in favor of Mickens on their counterclaim in that case on January 27, 1998. The Second District Court of Appeal reversed that Judgment **(Because the relief provided in the judgment was not supported by the pleading, the evidence and was not requested by either party)** and remanded the case to the trial court and, following remand, the trial court entered a final judgment that

inter alia, directed Damron Construction and the Mickens to obtain experts to determine the value of the labor and materials used to improve the Property for determination at a subsequent evidentiary hearing. Mickens appealed that judgment to the Second District Court of Appeal and that Court affirmed the judgment per curiam. **(The Second District Court's per curiam decision required the Mickens to commit or submit to a fraud against themselves in the alternative the trial court would enter two fraudulent final judgments against the Mickens. (1) a $234, 854.64, in favor of Damron and (2) a foreclosure or equitable lien in favor of Guaranty. The Damrons immediately assigned the $234, 854.64 over to Guaranty so Stewart Title has obtained two final judgments against the Mickens as an award and benefit for their fraud against the Mickens.)** On October 2, 2003, the Court entered a final judgment in Case no. 1997CA-000455 in the amount of $234,854.64, in favor of Damron Construction

Company and against Mickens, jointly and severally.

(Damron was not a real party in interest and it fraud did not entitle it to any relief in equity or law.

(PURPORTED) FINDINGS OF FACTS

In February 1996, Ronnie Mickens, an Assistant Principal and recipient of two Master Degrees, purchased a subdivision lot, along with his wife, Gloria, for $25,000. That lot is the subject of this lawsuit. It was their intention to build a house on the lot for the couple to use as their home.

In preparation to build their home, Mickens secured a VA guaranteed loan commitment through Nations Bank for permanent financing. Unfortunately for Mickens, the Veteran's Administration did not provide a guarantee for construction loans. Mickens insisted on a VA loan because they wanted 100 percent financing for their mortgage including the price of the lot, which had already been paid for in full. Mickens wanted the cash equity to purchase furniture for their new home.

In furtherance of Mickens' plans, they chose Damron to construct a single-family custom home for them. Ken Sale, the loan officer from Nations Bank, advised Damron and Mickens that Damron would have to secure a construction loan in Damron's name during the period of construction. After the construction, Mickens could then use the VA mortgage through Nations Bank as his final loan and mortgage. In order for Damron to secure a construction loan, it would be necessary for Mickens to transfer the lot to Damron, and Damron to use that lot as security on a construction loan. After the house was completed, the house and lot would be transferred back to Mickens in a closing that would pay off Damron's construction loan with the proceeds of Mickens permanent VA mortgage through Nations Bank.

Mickens and Damron executed a home construction contract on May 4, 1996. Page four of that contract states, ***"The lot to be temporary [sic] subordinated to the builder, then release back at final closing with Ron and Gloria***

Mickens." Damron had never built a home for a client using a VA loan, and was unfamiliar with the procedures. The aforementioned procedure, however, was a routine practice where lot owners wanted to build a home on their lot, and insisted on a VA mortgage. Ken Sale, loan officer for Nations Bank, who was Mickens' lender, explained the required procedure to both Damron and Mickens.

To accomplish this intended building project, Chase Federal Bank, FSB (Chase), made a $156,000 construction mortgage loan to Damron to finance the construction of the home for Damron. On August 13, 1996, the day of the closing of the construction loan, Damron picked up a substantially completed quitclaim deed, from Stewart Title of Polk County. The quitclaim deed had been prepared by Stewart Title of Polk County, and included the names of the Grantors and Grantee, as well as a legal description of the land. At Mickens' request, because of their inability to attend the closing, Damron obtained the unsigned but completed

quitclaim deed from Stewart Title of Polk County and brought it to Mickens who signed it outside of the presence of any witnesses or notaries. The deed was signed and delivered by Mickens to Damron at the Mickens home. Damron obtained a photocopy of the Mickens' driver's licenses and took that photocopy to Stewart Title of Polk County. Damron then took the signed quitclaim deed from Mickens and brought it to the closing at Stewart Title of Polk County.

Using the driver's license as a reference at the closings, Edith Rewis, and employee of Stewart Title of Polk County, signed the quitclaim deed as a witness, although she had never seen Mickens. Elaine P. Canady, also an employee as well as an officer of Stewart Title of Polk County, signed as a witness and notarized the quitclaim deed, even though she had never met Mickens. This was a clear violation of Section 689.01 Florida Statutes. Besides being the closing agent, Stewart Title of Polk secured the title insurance, which

was underwritten by Plaintiff, Stewart Title Guaranty for the benefit of insuring the lien of Chase's mortgage under a mortgagee title insurance policy. Nations Bank subsequently acquired Chase and merged into Nations Bank.

It is necessary to note that Stewart Title of Polk County is a wholly owned affiliated agent of Stewart Title Company. Plaintiff, Stewart Title Guaranty Company owns Stewart Title Company. Stewart Title of Polk had authority to bind the plaintiff for up to $300, 000 of title insurance without prior approval. During the trial, Guaranty attempted to separate itself from Stewart Title of Polk, claiming that Canady and Rewis were merely closing agents, and Guaranty is in the insurance business. This Court rejects that distinction. For equity purposes, Guaranty cannot separate itself from the wrong doing of its agent.

In November 1996, Damron and Mickens had a failing out concerning the quality and costs of the construction project. Mickens went to see an attorney. The

attorney advised Mickens that there was a quitclaim deed from Mickens to Damron that was recorded. In order to protect his rights to the lot, Mickens signed and recorded an Affidavit of Equitable Owners, on 18 December 1996. Paragraph two of that affidavit states,

"*Affiant entered into a contract with Allen Damron Construction Company, hereafter referred to as contractor, a copy of which is attached hereto as Exhibit "A".* ***The intent of the parties to the contract was that affiant would convey the above described property to contractor who would obtain construction financing, build a home on the property and reconvey the property to affiant." [Emphasis added].***

Eventually, Damron sued Mickens as described above in Case No. 1997CA-000455. On January 27, 1998, a Final Judgment was entered by the Circuit Court of Polk County, Florida, finding that the Mickens "deed" to Damron Construction was void ab initio. That final judgment was

reversed by the Second District Court of Appeal, however, before it was reversed, in 1998, NationsBank gave notice of a claim under the title policy, and Stewart Title Guaranty exercised its right under the policy to purchase the loan to resolve the claim. Thereafter, Stewart Title Guaranty commenced this foreclosure proceeding because Damron defaulted on the loan, while Mickens possesses the improved property.

DISCUSSION OF THE EQUITIES

It is a maxim of equity that, "equity regards that as done which ought to have been done," which means that equity will treat subject matter, as to collateral consequences and incidents, in the same manner as it the final acts, contemplated by the parties had been executed exactly as they ought to have been. *Johnson v. Dichiara,* 84 So. 2d 537 (Fla. 1955). Although it is clear that Stewart Title of Polk witnessed and notarized the quitclaim deed in violation of Section 689.01 Florida Statutes, and was aided in that task by

Damron in so doing, there is not evidence whatsoever that Stewart Title of Polk, or Damron intended any ill will against Mickens. Likewise, in *Palm Beach Savings and Loan Association v. Fishbein,* 619 So. 2d 267 (Fla. 1993), a husband and wife were proceeding with a divorce and the bank permitted the husband to obtain his wife's signature on a mortgage not in their presence. Unbeknownst to the bank or Mrs. Fishbein, the husband forged his wife's signature to the mortgage and applied the money to three existing mortgages and taxes. Mrs. Fishbein therefore benefited from Mr. Fishbein's fraud. The Fourth District Court of Appeal was concerned that Mrs. Fishbein was not a party to the fraud and reasoned an equitable lien should not be enforced against her property. The Florida Supreme Court disagreed and said equitable liens have been granted in other cases to prevent unjust enrichment. *See Jones v. Carpenter,* 90 Fla. 407, 106 So. 127 (1925) (the court permitted the trustee of a bankrupt bread company to have an equitable lien against the house of

the company's former president which had been improved by funds embezzled from the company); *La Mar v. Lechlider*, 135 Fla. 703, 185 So. 833 (1939) and *Sonneman v. Tuszynski*, 139 Fla. 824, 191 So. 18 (1939) (no fraud involved); *Spridgen v. Spridgen*, 779 So. 2d 501 (Fla. 2d DCA 2000) (an equitable lien was granted when former spouses entered into an agreement to which the ex-husband loaned the former wife funds to renovate home in which she would get a mortgage for the improvements in order to pay him back. The former wife did not get the mortgage and the court said an equitable lien would leave the former wife no worse off than if she honored her agreement and without the lien she would be unjustly enriched).

The court in *Palm Beach Savings and Loan Association* reasoned, "While Palm Beach Savings could have been more prudent in handling the closing and such prudence may have avoided the fraud, I do not believe that any such negligence should be a bar to an equitable lien.

Palm Beach Savings' mistake, if any, was one of neglect and not of active misfeasance." *Palm Beach Savings and Loan Association*, 619 So. 2d at 270. The court held that an equitable lien could be imposed upon respondent's homestead property in order to prevent unjust enrichment even though respondent was not a party to the fraud perpetrated against petitioner.

Similarly, Stewart Title-Polk should have been more prudent in the deed process but their poor judgment should not prevent them from getting an equitable lien on the house. Mickens signed a deed without it being witnessed or notarized, and delivered it to Damron. Their intent to have a house built on their property was fulfilled. Clearly, Mickens received a substantial improvement and benefit to their land. The actions of Damron and Stewart Title were shortcuts in an attempt to accommodate Mickens and there is no evidence in the record that indicates that Damron or Stewart Title of Polk acted fraudulently, to the detriment of Mickens, although

there conduct was contrary to the requirements of the law. Common sense dictates an equitable lien should be imposed to prevent unjust enrichment.

As a result of the closing of the construction loan closing, Damron began to build the home for which Mickens contracted. At all times, Damron intended to build a home for Mickens and transfer it back to them at the final closing of the home. Damron never intended to keep the home for himself, of deprive Mickens of the home.

Mickens may have suffered damages as a result of a contract dispute with Damron which was based upon the quality of the materials, workmanship, costs, and specifications of the contract. The defect of the quitclaim deed, however, has nothing to do with the causation of those damages. Had Section 689.01 Florida Statutes, been complied with, Mickens would still have the same dispute with Damron concerning construction discrepancies. Those

construction disputes have already been addressed in 1997CA-000455.

The simple and relevant facts of this protracted litigation are these:

1. Mickens wanted Damron to be his building contractor, and Damron was his building contractor.

2. Mickens wanted Damron to build them a house on their lot, and got a house built on their lot.

3. Mickens intended to live in the home constructed on his lot, and they have, for six years.

4. Mickens intended to pay for the house, but refused to do so.

5. Mickens intended to make mortgage payments on that residence, as it evidenced by their securing a V.A. mortgage commitment, but they have never closed on that or any other V.A. mortgage.

6. Mickens signed the quitclaim deed in furtherance of getting the house built on the lot in question, and delivered it to Damron.

7. Mickens benefited by Damron getting a construction loan.

8. After the home was completed, Mickens refused to close on the final V.A. Mortgage, and Damron filed suit for Specific Performance.

9. Mickens have lived in the house without paying rent or mortgage payments for approximately six years.

On 6 April 1998 Judge Timothy Strickland ordered Mickens to vacate the house by 27 April 1998. In November of 1998, without authority, and in violation of the court's order, Mickens moved back into the house, where they have resided rent and mortgage free since. On 11 February 1999 Circuit Judge Cecelia M. Moore found the Mickens in direct contempt of court, for the above conduct, however, she ordered mediation instead of imposing contempt sanctions.

Mickens have demonstrated their defiance on another occasion. In the related case of **Allen Damron Construction Company v. Ronnie and Gloria Mickens, Case No. 1997CA-000455**, Mickens defied another court order. On 26 June 2002, pursuant to court order Mickens denied access to the home to Damron and their expert along with a Polk County Sheriff's deputy, who were there to lawfully inspect the property. Judge Randall McDonald conducted a show cause hearing on 26 August 2002. He orally granted the order to compel and reserved jurisdiction to impose appropriate sanctions. Immediately after the hearing, after Judge McDonald left the hearing room, Mickens made threats of bodily injury to anyone who came onto his property for the court-ordered inspection. As a result, Judge McDonald recused himself. That defiance by the Mickens' was instrumental to this Court entering Final Judgment in case 1997CA-000455 on October 2, 2003.

The court only mentions the above demonstrations of reckless defiance and lawlessness because it goes to the issue of equity. Mickens points to one occasion of noncompliance of statutory requirements as the sole basis for them to get a free house. However, Mickens' conduct throughout the course of the seven years of litigation has been reprehensible to say the least. Mickens has conducted themselves for more lawlessly than Stewart Title Guaranty Company.

If Mickens had taken a 100 percent loss as a result for the misconduct of Stewart Title of Polk, their loss would be limited to the value of the lot, to wit, $25,000. Mickens have recouped those damages by more than 300 percent, by being in possession of that property for over six years, most of which has been in violation of court order. Moreover, Mickens would in effect be winning the lottery if they walk away with the house with no lien on it. In *Palm Beach Savings and Loan Association*, the court reasoned the wife would be in effect winning the lottery if she walked off with

the two-million dollar house with no lien on it, when it would have had at least a $850,000 debt on it. 619 So. 2d at 271. Therefore, equity requires that Mickens benefit no more from Stewart's poor business practice.

The equities of this case demand that the complaints for foreclosure, Equitable Lien and reestablishment of the note are granted.

COUNTERCLAIM

Counterclaim Plaintiffs failed to prove any theory of their claim against Stewart Title Guaranty Company as well as failing to prove damages. The counterclaim is therefore **DENIED.**

Plaintiff's counsel is hereby directed to prepare a final judgment consistent with this order.

Therefore, it is **ORDERED AND ADJUDGED** that the complaints for foreclosure, Equitable Lien and reestablishment of the note are hereby **GRANTED.** It is

further **ORDERED** that Counterclaim Plaintiffs shall take nothing, and Plaintiff/Counterclaim Defendant shall go hence without day.

DONE AND ORDERED at Bartow, Polk County, Florida, this 14 day of May 2004.

HARVEY A. KORNSTEIN, Circuit Judge

APPENDIX H

SUPREME COURT OF FLORIDA

WEDNESDAY, JULY 20, 2005

CASE NO.: SCO5-257
Lower Tribunal No.: 2D03-4550

RONNIE MICKENS, ET UX. **vs.** ALLEN DAMRON CONSTRUCTION CO.,
Petitioner(s) Respondent(s)

ORDER

This cause having heretofore been submitted to the Court on jurisdicitional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3 (b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330 (d).

PARIENTE, C.J., and LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

Thomas D. Hall
Clerk, Supreme Court

APPENDIX I

SUPREME COURT OF FLORIDA

June 14, 2005

RE: RONNIE MICKENS, ET AL. vs. STEWART TITLE GUARANTY COMPANY, ET AL.

CASE NUMBER: SCO5-930

Lower Tribunal Case Number: 2D04-2699

The Florida Supreme Court has received the following documents reflecting a filing date of 06/13/2005.

Petitioner's Extraordinary and Emergency Motion for Reconsideration of Petition for Review and for Consolidation and Joinder with Case No. SC05-257

(Original and five copies)

The above motion has been treated as a motion for rehearing.

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this case.

Moreover, ALL PLEADINGS SIGNED BY AN

ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

APPENDIX J

SUPREME COURT OF FLORIDA

THURSDAY, JUNE 16, 2005

CASE NO.: SCO5-930

RONNIE MICKENS, ET AL. vs.	STEWART TITLE GUARANTY COMPANY, ET AL
Petitioner(s)	Respondent(s)

ORDER

Pursuant to this Court's order dated June 1, 2005, the Motion for Rehearing is hereby stricken as unauthorized.

A True Copy

Test:

Thomas D. Hall
Clerk, Supreme Court